IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.1580 OF 1989

M/s.Ajmera Ceramics ..Plaintiff

V/s.

Kishan Khanna ..Defendant

Mr.Mowt Bhansali i/b.K.K.Tated for plaintiff

CORAM : A.M.KHANWILKAR, J.

DATE : 21ST SEPTEMBER, 2007

P.C.

1. None appears for defendant though served. No Written Statement has been filed by defendant. Accordingly, the matter proceeds against defendant as undefended suit in terms of order dated 27th August, 2007.

2. In substance, suit claim is in the sum of Rs.1,90,432.02 Ps. along with further interest @ 18% p.a. from the date of filing of the suit till realisation. The claim is based on the assertion that the plaintiff partnership firm had sold and delivered goods to defendant which was acknowledged by the defendant. The plaintiff supplied goods

from time to time to the defendant. Agreed amount of such goods supplied works out to Rs.3,54,614/-. The defendant paid from time to time Rs.1,24,254/- as on 31st May, 1986. The plaintiff called upon the defendant to pay the outstanding amount but the defendant did not pay the amount. The defendant acknowledged the outstanding amount in his letter dated 31st May, 1986 Exhibit 'A' to the plaint. In other words, the defendant acknowledged his liability to pay the outstanding amount. Inspite of legal notice, the defendant did not pay the outstanding amount. Hence, the plaintiff has filed the present suit for the following relief.

(i) The defendant be ordered and decreed to pay to the plaintiffs, the sum of Rs.1,90,432.02 Ps. with further interest on Rs.1,24,254/- at 18% per annum from the date of the filing of the suit till payment and/or realisation and the costs of the suit.

3. The plaintiff has filed an affidavit in lieu of examination-in-chief of Kirtikumar Rasiklal Ajmera, authorised guardian of Rasiklal G. Ajmera dated 11th September, 2007. The case made out in the plaint has been re-iterated in his affidavit. Besides the affidavit, the plaintiff is relying on the original documents such as relevant bills, delivery challans, acknowledgement of goods supplied and confirmation of outstanding amount by the defendant. From the documents produced by the plaintiff it is not possible to hold that rate of interest demanded by the plaintiff for delayed payment was agreed rate of interest. However, plaintiff contends that in the legal notice sent to the defendant, the defendant was put to notice if the payment was not made in time, the defendant would be liable to pay interest @ 18% p.a. The defendant has not chosen to reply to the said notice nor paid the outstanding amount. On this basis, plaintiff claims interest @ 18% p.a.on the principal amount referred in the suit. On the other hand, the defendant has not chosen to appear nor filed any Written Statement.

4. After having considered the plaint, affidavit of evidence as well as original documents, I find substance in the case made out by the plaintiff that there is admission about the outstanding amount of Rs.1,24,254/- as on 31st May, 1986. Insofar as that claim is concerned, it will have to be accepted as it is. The next question is, whether plaintiff is entitled for interest, if so, at what rate ? In the first place it is not a case of agreed rate of interest between the parties. However, as it is obvious that the outstanding amount repayable by the defendant is in relation to business transaction, Plaintiff is entitled for reasonable interest atleast @ 12% p.a. Plaintiff will, therefore, succeed not only in getting the decree in respect of principal amount but also interest on the said amount @ 12% p.a.

5. Accordingly, in exercise of power under Order VIII, Rule 10 of the Civil Procedure Code suit is decreed and it is ordered that the defendant do pay a sum of Rs.1,90,432.02 Ps with

further interest @12% p.a. from the date of filing of the suit till realisation. Plaintiff is entitled for costs of the suit. Decree be drawn up accordingly.

(**A.M.KHANWILKAR, J.**)